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United States
Circuit Court of Appeals
For the Ninth Circuit.

RUDOLPH SCHULTZ,

Plaintiff in Error,

vs.

STACK-GIBBS LUMBER COMPANY, a Corpora-
tion,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the District of Idaho,
Northern Division.

Filed

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F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of Attorneys of Record.]

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*In the District Court of the First Judicial District
of the State of Idaho, in and for Shoshone
County.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY,

Defendant.

Complaint.

Comes now Rudolph Schultz, the plaintiff above named, and for complaint against the Stack-Gibbs Lumber Company, the defendant above named, he complains and alleges as follows:

1.

That at all the times hereinafter mentioned the plaintiff was and still is a resident of the County of Shoshone, in the State of Idaho.

2.

That at all the times hereinafter mentioned the defendant was and still is a corporation organized and created under and by virtue of the laws of the

State of Michigan, with authority to do business in the State of Idaho, and having an office for the transaction of business in said State of Idaho, at Coeur d'Alene, in the County of Kootenai.

3.

That on or about October 15, A. D. 1912, the defendant was the owner of the southwest quarter (SW. $\frac{1}{4}$) and west half (W. $\frac{1}{2}$) of southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-four (24), the northeast quarter (NE. $\frac{1}{4}$) and north half (N. $\frac{1}{2}$) of *southeast* (SE. $\frac{1}{4}$) of Section Twenty-five (25) and the northeast quarter (NE. $\frac{1}{4}$) of Section Twenty-six (26), all in Twp. 48 North, Range One, East Boise Meridian, in the County of [1*] Shoshone, State of Idaho, which said lands had growing thereon large quantities of timber consisting of merchantable white pine and yellow pine and large quantity of mixed timber of other varieties; that at said last-mentioned date, and ever since that time, the defendant was and has been engaged in operating a sawmill for the purpose of manufacturing logs into lumber and wood products and its purchase and ownership of the lands and timber above described were for the purpose of converting the said timber, growing upon the said lands, into lumber and wood products, letting the cutting, removal and transportation of said timber to other persons engaged in and familiar with the logging business; that the plaintiff was, on that date and for a long time previous thereto, had been en-

*Page-number appearing at foot of page of certified Transcript of Record.

gaged in logging timber and was experienced and skilled in such business and all of the steps necessary in cutting, felling, skidding and transporting timber and logs; and that on or about the said October 15, A. D. 1912, the plaintiff and defendant entered into a contract, the consideration of which was the mutual premises of the parties to the same, whereby the defendant contracted with the plaintiff for the cutting and removal of all of the merchantable white pine and yellow pine timber, standing, growing and being upon the said above-described lands, the plaintiff to enter upon the said above-described lands, for the purpose of securing and transporting said timber and the defendant agreeing to pay to plaintiff certain sums, at various stages of the work, for the logging of said lands, a copy of which contract is hereto annexed, marked exhibit "A" and made a part hereof and to which reference is now made for greater certainty.

4.

That upon the execution and mutual delivery of the said contract the same being made in duplicate, the plaintiff entered upon the performance of his part of the same and employed a large number of men, secured by purchase and lease, the right of way for the necessary roads and skidway at a cash outlay of more than eleven hundred dollars, [2] purchased and furnished teams and invested a large amount of money, to wit, more than seven hundred dollars in camp equipage, tools and supplies and ex-

pended the sum of two hundred fifty-five dollars for labor, and by December 15, 1912, he, the plaintiff, felled, cut and placed upon skids and skidways two hundred fifty thousand feet of white pine and yellow pine and in addition thereto felled one hundred thousand feet of similar timber preparatory to placing the same upon skids and in every respect complied with the conditions of the said contract upon his part.

5.

That under the terms of the said contract it was provided that on the 15th day of each month for all white pine and yellow pine logs which the plaintiff shall have placed or caused to be placed on skids for transportation that the defendant was to pay him, the plaintiff, the sum of three and 25/100 dollars for each one thousand feet of logs, board measure, placed upon said skids and that the plaintiff in accordance with said contract, had felled, cut and placed upon said skids two hundred fifty thousand feet of white pine and yellow pine as aforesaid, and that, then and there, it became and was the duty of the defendant to pay the plaintiff the sum of three and 25/100 dollars per thousand feet, the said logs having been scaled as required by said contract, the same amounting in aggregate to the sum of eight hundred twelve and 50/100 dollars.

6.

That at the time of the making of the said contract with the defendant, Exhibit "A," the plaintiff had to his credit in the bank the sum of about seven hundred dollars, his total cash capital, of which fact he

informed the defendant; that he further, then and there, informed the defendant that he owned a homestead at or near Kingston, in said County of Shoshone, which he could and would incumber for as [3] large amount as he could by his best endeavors obtain and that these two items constituted his entire and obtainable assets, all of which he informed the defendant and the defendant then and there well knew the same and was fully advised of the plaintiff's financial condition; that among other things the said contract provided and required that the plaintiff should furnish all right of way over which to haul the logs to be cut from the said lands at his own expense; that on or about the said November 15, A. D. 1912, the plaintiff had expended for right of way for said road the sum of two hundred dollars and more than eleven hundred dollars for building and constructing such road and to fit the same for the purpose of hauling the logs to water and in addition he had expended for supplies and rent of building more than seven hundred dollars; that he had mortgaged his said homestead for as large amount as he was able to obtain and that the expenditures made in and about the said business by plaintiff and required to be made under the terms of said contract had exhausted all of his resources; that on said last-mentioned date, the same being due him under said contract, the plaintiff requested the defendant to pay him the sum of eight hundred twelve and 50/100 dollars for the logs all ready placed upon the skids as hereinbefore recited, which said sum or any other sum the defendant refused and neglected to pay; that

plaintiff made, at different times, four trips to Coeur d'Alene, where the branch office of defendant was situated, and requested and demanded payment of the said amount so due to him as aforesaid but the said defendant then and there neglected and refused to pay the same, and has never, to this time, paid the said amount or any portion thereof to plaintiff for his said services in carrying out his part of said contract; and that the plaintiff then and there, to wit, at the time of the first refusal and at the subsequent refusals to pay, had expended all of the cash money which he, the plaintiff, had; that he had mortgaged his homestead [4] to enable him to carry out his part of said contract; that he had exhausted all of his resources and that he was utterly unable to obtain further money or credit from any source whatever, and that unless the defendant paid him the amount so due to him as aforesaid, he would be unable to carry out his part of said contract, all of which facts were fully understood by the defendant and the defendant was fully cognizant of the same.

7.

That because of the refusal of the defendant to pay him, the plaintiff, the amount of money so due to him, as aforesaid, the payment of which would have enabled the plaintiff readily to proceed with his contract and to carry out his part of the same, but the defendant having refused to pay the same, the plaintiff was unable to complete his part of the said contract and to go on with the same and because of the acts of the defendant, aforesaid, he, the plaintiff, was obliged to suspend all efforts to carry out his part of

the said contract and to abandon the same.

8.

That there was growing upon the said lands hereinafore described, the cutting, felling and transporting of which was covered by the said contract three million five hundred thousand (3,500,000) feet of yellow pine and one million five hundred thousand (1,500,000) feet of white pine, all of which would have been cut, felled and transported by plaintiff in accordance with his part of said contract if the defendant had not repudiated its obligations to pay the plaintiff for his work and labor the amount, on the times and in the manner provided by said contract, had the plaintiff not been prevented from carrying out his said contract by the acts of the defendant as hereinbefore mentioned; and that if the plaintiff had by the acts of the defendant required on its part under said contract been permitted to carry out and complete his part of the same he would have had a profit thereon of the sum of one dollar (\$1.00) per thousand feet, board measure, of the [5] aggregate of said timber, to wit, five million (5,000,000) feet; and by reason of the default of the defendant and its repudiation of its said contract the plaintiff had been damaged in the sum of five thousand dollars, which he would have realized as profits upon his said contract; the sum of seven hundred dollars, expended by him for supplies and rent of building; two hundred dollars expended by him for right of way, eleven hundred dollars expended by him in making the said roadway and two hundred fifty-five dollars expended by him for labor, all of which were lost to

him by reason of the said acts of the defendant.

WHEREFORE, the plaintiff prays judgment against the Stack-Gibbs Lumber Company, the defendant, above mentioned, for the sum of seven thousand two hundred fifty-five dollars, for all costs and disbursements in this behalf by him incurred and expended, and for such other and further relief as to the Court shall seem meet and proper.

And the plaintiff above named further complaining of the said defendant for a second cause of action against the said defendant complains and alleges as follows:

1.

He adopts paragraphs one (1), two (2), and three (3) of his First Cause of Action herein set forth, and refers to the same for full certainty and makes the same a part hereof.

2.

That on the said October 15, A. D. 1912, in consideration of the plaintiff having entered into the contract described in his First Cause of Action herein and designated as Exhibit "A," the defendant entered into a contract in writing whereby it, the defendant, agree to sell to the plaintiff, and the plaintiff agreed to purchase from the defendant all timber growing upon the said lands described in paragraph three (3) of his First Cause of Action, other than the merchantable [6] white pine and yellow pine growing, situate and being thereon, to wit, all mixed white fir, red fir, tamarack, spruce, black pine and cedar timber, at and for the price and sum of 50¢ per 1,000 feet, the plaintiff to have 4 years to cut and remove

all of said mixed timber, a copy of which contract is hereto annexed, marked Exhibit "B" and made a part hereof.

3.

That the said contract, Exhibit "B," was dependent upon and in its carrying out was to follow the completion of the contract described in his First Cause of Action herein, Exhibit "A," and that by reason of the repudiation and default of the defendant described in paragraphs four (4), five (5), six (6) and seven (7), stated in his First Cause of Action herein, to which reference is now had and the same are made a part hereof, the plaintiff was prevented from carrying out and performing his part of the contract described in Exhibit "A," attached to his complaint, and he was obliged because of said acts of the defendant to abandon the same; that there was growing, standing and situate upon the said described lands the quantity of three million five hundred thousand (3,500,000) feet of mixed timber referred to and made the subject of the contract Exhibit "B," that if the defendant had kept its several obligations entered into with the plaintiff and had not repudiated and been in default in the carrying out of its said contract, the plaintiff in the performance of his part of the said contract Exhibit "B," would have readily had and made a profit of 75¢ per one thousand feet, board measure, of said mixed timber, to wit, an aggregate profit of two thousand six hundred twenty-five dollars, and by reason of the acts, repudiations, and default of the defendant the plaintiff has been damaged in said sum.

WHEREFORE the plaintiff prays judgment upon his said Second Cause of Action for the sum of two thousand six hundred twenty-five dollars and an aggregate judgment for the sum of nine thousand eight hundred [7] eighty dollars, his costs in this behalf incurred and expended, and for such other and further relief as to the Court shall seem meet and proper.

J. H. WIXOM,
Attorney for Plaintiff. Residence and Postoffice
Address, Wallace, Idaho.

CHAS. E. MILLER,
Of Counsel.

State of Idaho,
County of Shoshone,—ss.

Rudolph Schultz, being first duly sworn, on his said oath, deposes and says: That he is the plaintiff in the within entitled action and that he has read the foregoing complaint; that he knows the contents thereof, and that he believes the same to be true.

RUDOLPH SCHULTZ.

Subscribed and sworn to before me this 7th day of March, A. D. 1914.

HENRY C. BUCHANAN,
Justice of the Peace in and for Said County. [8]

Exhibit "A" [to Complaint.]

THIS AGREEMENT, Made and entered into this 15th day of October, A. D. 1912, by and between Rudolph Schultz of Kingston, Idaho, the party of the first part, and the Stack-Gibbs Lumber Company, a

corporation organized and existing under and by virtue of the laws of the State of Michigan, authorized to do business in the State of Idaho, the party of the second part.

WITNESSETH, The party of the first part agrees to cut into saw logs, skid, haul, float and drive all of the merchantable white pine and yellow pine timber now situate and lying on the southwest quarter (SW. $\frac{1}{4}$) and west half (W. $\frac{1}{2}$) of southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-four (24), the northeast quarter (NE. $\frac{1}{4}$) and north half (N. $\frac{1}{2}$) of southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-five (25) and the northeast quarter (NE. $\frac{1}{4}$) of Section Twenty-six (26) Township Forty-eight (48) North, Range One, East Boise Meridian, Shoshone County, Idaho, at six and 50/100 dollars (\$6.50) per M. feet, board measure, delivered in the main North Fork of Coeur d'Alene River as hereinafter provided.

That all of said white pine logs be cut down to a diameter of not less than eight (8) inches at the small end excepting the 18 and 20 foot logs which shall be fifteen (15) inches and up in diameter at the small end and cut from coarse, common timber; that all said yellow pine logs be cut down to a diameter of not less than ten (10) inches at the small end, excepting the 18 and 20 foot logs which shall be fifteen (15) inches and up at the small end and cut from coarse, common timber.

That the lengths of said white pine logs shall be as follows: 15% 12 foot, 15% 14 foot, 60% 16 foot, 5% 18 foot, 5% 20 foot and that the yellow pine logs shall

be cut 10 % 12 foot, 10% 14 foot, 70% 16 foot, 5% 18 foot and 5% 20 foot. It is mutually agreed between the parties hereto that party of the second part may change the percentage of each length to the whole by serving written notice upon party of the first part.
[9]

That the said logs be scaled with a Scribner Decimal A. Rule by a scaler to be mutually agreed upon by the parties hereto, each to pay one-half of said scalers' wages, the party of the first part to board said scaler at his expense.

That all of said white pine and yellow pine logs be marked on the side with the side mark of the Stack-Gibbs Lumber Company A and that all said white pine and yellow pine logs be marked on both ends with the stamp mark of the Stack-Gibbs Lumber Company 32. That the end mark be placed on each end of each log a sufficient number of times to insure its identification as the property of the party of the second part.

That the party of the first part agrees to furnish all right of way over which to haul the above-mentioned logs.

That the party of the first part shall cut into saw logs, skid, haul, float and drive to the main North Fork of the Coeur d'Alene River not less than one million feet white pine timber on or before the spring drive of 1913 passes Pine Creek, and the balance of said white pine and yellow pine timber to be cut into logs, skidded, hauled, floated and driven to the main North Fork of Coeur d'Alene River on or before the spring drive of 1914 moves or not later than June

1st, 1914, except that should this contract be extended as hereinafter provided.

That the party of the first part shall furnish receipts for all labor performed on the above logs or satisfactory evidence that said labor has been fully paid, also receipts for payment of all supplies used in the logging of the above-mentioned timber, or satisfactory evidence that said supplies have been fully paid; that the said party of the first part shall fully perform their part of this contract and cut into saw logs, skid, haul, float and drive all said white and yellow pine timber and deliver same into the main North Fork of the Coeur d'Alene River on or before June 1st, 1914, except should the work of getting the white and yellow pine logs out by party of the [10] first part be delayed from causes unavoidable that the time be extended by mutual consent of the parties hereto.

In consideration of the stipulations herein to be fully performed by the party of the first part, the party of the second part agrees to pay to said party of the first part on the 15th day of each month Three and 25/100 Dollars per M. foot, board measure, for all said white pine and yellow logs which shall have been placed on skids by the party of the first part during the preceding calendar month, providing, however, that the party of the first part shall have roads made from skidways to be banking ground of Pine Creek so that the said logs can be hauled to the banking on Pine Creek without additional expense, excepting for hauling and Two and 25/100 Dollars per M. Feet, board measure, on the 15th

day of each month for all said white pine and yellow pine logs which shall have been hauled and floated in Pine Creek by the party of the first part during the preceding calendar month and the balance of \$1.00 per M. feet, board measure, on the 15th day of each month, for all said white pine and yellow pine logs delivered in the Main Fork (North) of Coeur d'Alene River during the preceding calendar month.

IN WITNESS WHEREOF the parties hereto have hereunto caused their names to be signed this 15th day of October, A. D. 1912.

(Signed) RUDOLPH SCHULTZ,
STACK-GIBBS LUMBER COMPANY.

By WM. DOLLAR,
Treasurer. [11]

State of Idaho,
County of Kootenai,—ss:

On this 23d day of October, A. D. 1912, before me, H. F. Cleland, a notary public, within and for said county, personally appeared Rudolph Schultz, known to me to be the individual who executed the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

[Seal]

H. F. CLELAND,
Notary Public.

State of Idaho,
County of Kootenai,—ss.

On this 15th day of October, A. D. 1912, before

me, H. F. Cleland, a notary public within and for said county, personally appeared Wm. Dollar, known to me to be the treasurer of the corporation that executed the within instrument and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

[Seal]

H. F. CLELAND,
Notary Public. [12]

Exhibit "B" [to Complaint].

This agreement made and entered into this 15th day of October, A. D. 1912, by and between Stack-Gibbs Lumber Company, a corporation, organized and existing under and by virtue of the laws of the State of Michigan, duly authorized to transact business in the State of Idaho, the party of the first part, and Rudolph Schultz of Kingston, Idaho, the party of the second part.

WITNESSETH: In consideration of the signing of a contract of even date herewith by the party of the second part, said contract being for the cutting into saw logs of the merchantable white pine and yellow pine timber on the lands described herein, and the skidding, hauling, floating and driving of same to the main North Fork of the Coeur d'Alene River, and fifty cents per M. feet board measure, on the mixed timber covered by this agreement and other valuable considerations;

The party of the first part agrees to sell and the party of the second part agrees to purchase all of the

mixed white fir, red fir, tamarack, spruce, black pine, and cedar timber on the following descriptions: Southwest quarter (SW. $\frac{1}{4}$) and West half (W. $\frac{1}{2}$) of Southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-four (24), Northeast quarter (NE. $\frac{1}{4}$) and North half (N. $\frac{1}{2}$) of Southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-five (25) and Northeast quarter (NE. $\frac{1}{4}$) of Section Twenty-six (26) Township Forty-eight (48) North Range One (1) East Boise Meridian, Shoshone County, State of Idaho.

Party of the second part agrees to cut and remove all of said mixed timber on or before four years from the date hereof and to pile the brush resulting from said cutting as the work progresses and to burn said brush each year, the piling and burning said brush to conform to the State Fire Law as enforced by the Fire Warden appointed by the State.

Party of the second part also agrees to pay said Fifty-cents per [13] M. feet, board measure, on the 10th day of each month for all said mixed timber cut, banked and scaled the preceding calendar month, title to said mixed timber to remain in party of the first part until fully paid for by party of second part.

First party agrees to fully warrant title and quiet possession to second party against any and all persons lawfully claiming or to claim the whole or any part thereof upon the completion of said contract bearing even date herewith and the payment of fifty-cents per M. feet, board measure and the piling and burning of brush as herein provided.

IN WITNESS WHEREOF the parties have

hereunto set their hands and seals this 15th day of October, A. D. 1912.

STACK-GIBBS LUMBER COMPANY.

By WM. DOLLAR,

Treas.

RUDOLPH SCHULTZ. [14]

State of Idaho,

County of Kootenai,—ss.

On this 15th day of October, A. D. 1912, before me, H. F. Cleland, a notary public within and for said county, personally appeared Wm. Dollar, to me known to be the treasurer of the corporation that executed the within instrument and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

[Seal.]

H. F. CLELAND,

Notary Public.

State of Idaho,

County of Kootenai,—ss.

On this 23d day of October, A. D. 1912, before me H. F. Cleland, a notary public within and for said county personally appeared Rudolph Schultz, known to me to be the individual who executed the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written

[Seal.]

H. F. CLELAND,

Notary Public. [15]

[Endorsed]: No. 3493. In the District Court of the First Judicial District of the State of Idaho, in and for Shoshone County. Rudolph Schultz, Plaintiff, vs. Stack-Gibbs Lumber Company, Defendant. Complaint. Filed this 9th day of March, 1914, John P. Sheehy, Clerk. By C. J. Callahan, Deputy. J. H. Wixom, Attorney for Plaintiff, Wallace, Idaho. Charles E. Miller, of Counsel. [16]

*In the District Court of the First Judicial District of
the State of Idaho, in and for Shoshone County.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY,

Defendant.

The State of Idaho Sends Greeting: To Stack-Gibbs Lumber Company, the Above-named Defendant.

You are hereby notified that a complaint has been filed against you in the District Court of the First Judicial District of the State of Idaho, in and for the County of Shoshone, by the above-named plaintiff.

And you are hereby directed to appear and answer the said complaint within twenty days of the service of this Summons if served within said Judicial District, and within forty days if served elsewhere; and you are further notified that unless you appear and answer said complaint within the time herein specified, the plaintiff will take judg-

ment against you as prayed, in said complaint.

Witness my hand and the seal of said District Court this 9th day of March, A. D. 1914.

JOHN P. SHEEHY,

Clerk.

By C. J. Callahan,

Deputy Clerk.

[Seal of the District Court.]

C. E. MILLER and J. H. WIXOM,

Attorneys for Plaintiff.

Residence and Postoffice, Wallace, Idaho. [17]

*In the District Court of the First Judicial District of
the State of Idaho, in and for Shoshone County.*

No. 3493.

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY,

Defendant.

Proof of Service of Summons.

State of Idaho,

County of Kootenai,—ss.

A. P. Bailey, being duly sworn, deposes and says: That he is now and at all times hereinafter stated was a person more than 21 years of age and is not a party nor has he any interest in the case above-entitled; that on the 12th day of March, 1914, in said County and State he served the summons in the case above entitled, which is hereunto attached, on

the above-named defendant, Stack-Gibbs Lumber Company, by delivering to Bert Nelson, designated agent of defendant corporation on whom process may be served, a true copy of said summons and a true copy of the complaint filed in said action attached to said copy of summons.

A. P. BAILEY.

Subscribed and sworn to before me this 13th day of March, 1914.

D. E. DANBY,

Clerk of Dist. Court.

[Seal of District Court.] [18]

[Endorsed]: No. 3493. In the District Court of the First Judicial District of the State of Idaho, in and for the County of Shoshone. Rudolph Schultz, Plaintiff, vs. Stack-Gibbs Lumber Company, Defendant. Summons. Filed on return Mar. 19, 1914, John P. Sheehy, Clerk of District Court. By C. J. Callahan, Deputy Clerk. J. H. Wixom, C. E. Miller, Residence and postoffice address, Wallace, Idaho, Attorneys for Plaintiff. [19]

*In the District Court of the First Judicial District of
the State of Idaho, in and for the County of
Shoshone.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER CO., a Corporation,
Defendant.

Petition for Removal.

To the Honorable District Court of the First Judicial District of the State of Idaho, in and for the County of Shoshone.

Comes now your petitioner, the Stack-Gibbs Lumber Company, defendant in the above-entitled action, and respectfully represents to this Honorable Court:

I.

That on the 9th day of March, 1914, the above-named plaintiff filed his complaint in the above-entitled cause in the said District Court of the First Judicial District of the State of Idaho, in and for the County of Shoshone, praying for a judgment against the defendant upon two causes of action:

1st. For damages alleged to have been caused the plaintiff by a breach of contract alleged to have been made by the defendant, in the sum of \$5,000.00 as the profits which the plaintiff would have made upon such contract, the further sum of \$700.00 alleged to have been expended for supplies, roads and buildings, and \$200.00 alleged to have been expended for right of way, \$1100.00 alleged to have been expended for making road, and \$255.00 alleged to have been expended by plaintiff for labor, all of which said damage was alleged to have accrued to plaintiff by reason of the alleged breach of contract by the defendant, making in all \$7255.00 claimed by the plaintiff on [20] the first cause of action for breach of contract.

2d. \$2,500.00 upon his second cause of action for damages alleged to have accrued to the plaintiff by

reason of plaintiff not being able to perform a contract entered into between the plaintiff and defendant for the purchase of certain timber by the plaintiff from the defendant because of the defendant not securing the proceeds or the anticipation profits from the first contract sued upon in the action.

II.

That upon the 13th day of March, 1914, the summons in said action was served upon your petitioner at Gibbs in Kootenai County, Idaho.

III.

Your petitioner further alleges that the time has not elapsed wherein petitioner is allowed under the laws and practice of the State of Idaho and the rules of the above-entitled court in which this suit is brought, to appear, plead, demur to, or answer said complaint.

IV.

Your petitioner further avers and alleges the fact to be that at the time of the commencement of said suit, and ever since said time, and at the present time, the plaintiff, Rudolph Schultz, was and still is a resident of Shoshone County, in the State of Idaho, and that said fact is alleged and set forth in paragraph one of his complaint filed herein.

V.

Your petitioner further avers and alleges the fact to be that your petitioner, the defendant in said suit, is now and during all the time for more than five years last passed, has been, a corporation duly organized and existing under and by virtue of the laws of the State of Michigan, and that its principal place

of office is in said State of Michigan, and that defendant at the time of the commencement of said suit was and ever since has been and still is a citizen of the State of [21] Michigan and a resident thereof, residing and having its principal place of business at said State of Michigan, but duly authorized to do business in the state of Idaho, and said fact is alleged and set forth in paragraph two of plaintiff's complaint herein.

VI.

Your petitioner further avers that this is a controversy between citizens of different states and that the matters in controversy in said suit exceed, exclusive of interest and costs, the sum and value of \$3,000.00 and, to wit, the sum of more than \$9,000.00.

Your petitioner herewith presents a good and sufficient bond as provided by the statutes in such cases that it will enter in the District Court of the United States for the District of Idaho, Northern Division, within thirty days from the date of filing this petition, a certified copy of the record in the above cause, for paying all costs that may be awarded by said District Court, if it shall hold that said suit was wrongfully or improperly removed thereto.

Your petitioner therefore prays that this court proceed no further herein except to make an order of removal as required by law, and to accept the bond presented herewith and to direct a transcript of the

record herein to be made for said District Court as provided by law.

THE STACK-GIBBS LUMBER COMPANY,

By WM. DOLLAR,
Its Secretary and Treasurer.

[Corporate Seal.]

REESE H. VOORHEES,

Residence and P. O. Address, Spokane,
Washington,

EZRA R. WHITLA,

Residence and P. O. Address, Coeur d' Al-
ene, Idaho,

Attorneys for Petitioner. [22]

State of Idaho,

County of Kootenai,—ss.

William Dollar, being first duly sworn, deposes and says: I am an officer of the Stack-Gibbs Lumber Company, a corporation, the defendant in the above-entitled action, to wit, its Secretary and Treasurer, and make this verification on its behalf, that I have read the above and foregoing petition, know the contents thereof and believe the facts therein stated to be true.

WILLIAM DOLLAR.

Subscribed and sworn to before me this 1st day of April, 1914.

[Notarial Seal.]

EZRA R. WHITLA,
Notary Public.

[Endorsed]: Due and legal service of the within and foregoing petition for removal admitted, and the

receipt and retention of a true and correct copy thereof acknowledged at Coeur d' Alene, Idaho, this 6th day of April, 1914.

J. H. WIXOM,
CHARLES E. MILLER,
Attorneys for Plaintiff. [23]

[Endorsed]: No. 3493. In the District Court of the First Judicial District of the State of Idaho, in and for the County of Shoshone. Rudolph Schultz, Plaintiff, vs. Stack-Gibbs Lumber Co., Defendant. Petition for Removal. Filed this 6th day of Apr., 1914, at 4 o'clock P. M. John P. Sheehy, Clerk of District Court. By C. J. Callahan, Deputy. Ezra R. Whitla, Attorney for Defendant, Residence and P. O. Address, Coeur d'Alene, Idaho. [24]

*In the District Court of the First Judicial District
of the State of Idaho, in and for the County of
Shoshone.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY, a Corporation,

Defendant.

Bond on Removal.

KNOW ALL MEN BY THESE PRESENTS: that we, the Stack-Gibbs Lumber Company, a corporation, as principal, and the National Surety Company, a corporation, organized and existing under and by virtue of the laws of the State of New York,

and duly authorized to transact the business of suretyship in the State of Idaho, as surety, are held and firmly bound unto Rudolph Schultz, the plaintiff in the above-entitled cause, his heirs, executors and administrators, in the sum of five hundred (\$500.00) dollars, lawful money of the United States, for the payment of which, well and truly to be made, we and each of us, bind ourselves and our, and each of our, successors, jointly and severally by these presents.

Dated this 1st day of April, A. D. 1914.

The conditions of this obligation are such that, whereas, the said Stack-Gibbs Lumber Company has applied by petition to the District Court of the First Judicial District of the State of Idaho, in and for the County of Shoshone, for the removal of that certain cause therein pending wherein Rudolph Schultz is plaintiff and said Stack-Gibbs Lumber Company, the defendant, to the District Court of the United States for the District of Idaho, Northern Division, for further proceedings, on the ground in said petition set forth, and that all further [25] proceedings in said action of said District Court of the First Judicial District in and for Shoshone County be stayed.

NOW, THEREFORE, if the said petitioner, the said Stack-Gibbs Lumber Company, a corporation, shall enter in said District Court of the United States for the District of Idaho, Northern Division, aforesaid, within thirty (30) days from the date of filing said petition, a certified copy of the record in said suit and shall pay or cause to be paid all costs that may be awarded by the said District Court of the

United States for the District of Idaho, if said District Court of the United States shall hold that such suit was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said principal and surety have caused these presents to be executed by their respective duly authorized corporate officers and respective corporate seals to be affixed this 1st day of April, 1914.

STACK-GIBBS LUMBER COMPANY, a
Corporation,

[Corporate Seal] By WM. DOLLAR,
Its Secretary and Treasurer.

NATIONAL SURETY COMPANY, a Cor-
poration,

NATIONAL SURETY COMPANY,
By ISAAC M. BUSBY, and
[Corporate Seal] EZRA R. WHITLA,
Its Attorneys-in-Fact.

[Endorsed]: Due and legal service of the within and foregoing Bond on Removal admitted, and the receipt and retention of a true and correct copy thereof acknowledged at Coeur d'Alene, Idaho, this 6th day of April, 1914.

J. H. WIXOM,
CHAS. E. MILLER,
Attorneys for Plaintiff. [26]

[Endorsed]: No. 3493. In the District Court of the First Judicial District of the State of Idaho, in and for the County of Shoshone. Rudolph Schultz, Plaintiff, vs. Stack-Gibbs Lumber Co., De-

fendant. Bond on Removal. Approved April 6th, 1914. W. W. Woods, Judge. Filed this 6th day of Apr. 1914, at 4 o'clock P. M. John P. Sheehy, Clerk of District Court. By C. J. Callahan, Deputy. Ezra R. Whitla, Attorney for Defendant, Residence and P. O. Address, Coeur d'Alene, Idaho. [27]

*In the District Court of the First Judicial District
of the State of Idaho, in and for the County of
Shoshone.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY, a Corpora-
tion,

Defendant.

Notice of Filing Petition and Bond for Removal.

To the Above-named Plaintiff in the Above-entitled Action and to J. H. Wixom and C. E. Miller, Attorneys for Said Plaintiff:

Please take notice that the defendant herein will on the 6th day of April, 1914, at the hour of 2:30 o'clock P. M. of said day, file the petition attached hereto with the clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Shoshone, and will at said time, or as soon thereafter as counsel can be heard, at the courtroom of the above-entitled court, present said petition and bond, of which the attached is a copy, to the above court and ask that an order, a copy of which is attached hereto, be made and entered herein

removing this case to the District Court of the United States for the District of Idaho, Northern Division.

REESE H. VOORHEES,

Residence and P. O. Address,
Spokane, Washington,

EZRA R. WHITLA,

Residence and P. O. Address,
Coeur d'Alene, Idaho,
Attorneys for Defendant.

[Endorsed]: Due and legal service of the within and foregoing Notice admitted and the receipt and retention of a true and correct copy thereof acknowledged [28] at Coeur d'Alene, Idaho, this 6th day of April, 1914.

J. H. WIXOM,

CHAS. E. MILLER,

Attorneys for Plaintiff.

[Endorsed]: No. 3493. In the District Court of the First Judicial District of the State of Idaho, in and for the County of Shoshone. Rudolph Schultz, Plaintiff, vs. Stack-Gibbs Lumber Co., Defendant. Notice of Filing Petition and Bond for Removal. Filed this 6th day of Apr. 1914, at 4 o'clock P. M. John P. Sheehy, Clerk of District Court. By C. J. Callahan, Deputy. Ezra R. Whitla, Attorney for Defendant, Residence and P. O. Address, Coeur d'Alene, Idaho. [29]

*In the District Court of the First Judicial District
of the State of Idaho, in and for Shoshone
County.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY, a Corpo-
ration,

Defendant.

Order of Removal.

This cause came on to be heard upon the petition of the defendant herein for an order removing this cause to the District Court of the United States, for the District of Idaho, Northern Division, and it appearing to the Court that the defendant has filed its petition for said removal in due form of law, and has filed its bond duly conditioned, with good and sufficient sureties, as provided by law, and it appearing to the Court that this is a proper cause for removal to said District Court of the United States.

NOW, THEREFORE, it is hereby ORDERED and ADJUDGED that this cause be and it hereby is removed to the District Court of the United States for the District of Idaho, Northern Division, and the clerk of this court is hereby directed to make up the record of said cause for transmission to said court forthwith, and that all further proceedings in this cause in this court be and the same hereby is stayed.

Done in open court this 6th day of April, 1914.

WILLIAM W. WOODS,

Judge. [30]

[Endorsed]: Due and legal service of a copy, unsigned, of the within and foregoing Order admitted, and the receipt and retention of a true and correct copy thereof acknowledged at Coeur d'Alene, Idaho, this 6th day of April, 1914.

J. H. WIXOM,
CHAS. E. MILLER,
Attorneys for Plaintiff.

[Endorsed]: No. 3493. In the District Court of the First Judicial District of the State of Idaho, in and for the County of Shoshone. Rudolph Schultz, Plaintiff, vs. Stack-Gibbs Lumber Co., Defendant. Order for Removal. Filed this 6th day of Apr. 1914, at 4 o'clock P. M. John P. Sheehy, Clerk of District Court. By C. J. Callahan, Deputy. Ezra R. Whitla, Attorney for Defendant, Residence and P. O. Address, Coeur d'Alene, Idaho. [31]

[**Certificate of Clerk to Transcript on Removal.**]

*In the District Court of the First Judicial District
of the State of Idaho, in and for the County of
Shoshone.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY,

Defendant.

State of Idaho,

County of Shoshone,—ss.

I, John P. Sheehy, Clerk of the District Court of the First Judicial District of the State of Idaho, in

and for the County of Shoshone, do hereby certify the foregoing to be a full, true and correct copy of the following papers on file in my office in the above-entitled cause, constituting the records of said cause, to wit:

Complaint, filed Mar. 9, 1914.

Summons, filed Mar. 19, 1914.

Petition for removal, filed Apr. 6, 1914.

Bond on Removal, filed Apr. 6, 1914.

Notice of filing petition and bond for removal,
filed Apr. 6, 1914.

Order for removal, filed Apr. 6, 1914.

as full, true, perfect, correct and complete as the same now remain on file at my office and in my custody.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 11th day of April, A. D. 1914.

[Seal District Court]

J. P. SHEEHY,
Clerk District Court.

[Endorsed]: Filed May 1, 1914. A. L. Richardson, Clerk. By Lawrence M. Larson, Deputy. [32]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY,

Defendant.

Motion to Strike Out Part of Complaint.

Now comes the defendant, Stack-Gibbs Lumber Company, and moves the Court to strike from the first cause of action of plaintiff's complaint all of the following matters and things therein contained, to wit:

Commencing with the word "that," being the first word in paragraph six of said first cause of action, and continuing down to and including the words "financial condition," being at the insertion of the second semicolon in said paragraph and being the following matter, to wit:

"That at the time of the making of the said contract with the defendant, Exhibit 'A,' the plaintiff had to his credit in the bank the sum of about seven hundred dollars, his total cash capital, of which fact he informed the defendant; that he further, then and there, informed the defendant that he owned a homestead at or near Kingston, in said County of Shoshone, which he could and would incumber for as large amount as he could by his best endeavors obtain and that these two items constituted his entire and obtainable assets, all of which he informed the defendant, and the defendant then and there well knew the same and was fully advised of the plaintiff's financial condition."

Defendant also moved to strike from said complaint that part thereof commencing with the word "that" on the fourth semicolon in said paragraph six, on page four of said complaint, and continuing

down to and including the words "all his resources" in said paragraph, being the following matter, to wit: [33]

"That he had mortgaged his said homestead for as large amount as he was able to obtain and that the expenditures made in and about the said business by plaintiff and required to be made under the terms of the said contract had exhausted all of his resources."

Also the following matter in said paragraph six, commencing with the word "and" immediately following the last semicolon in said paragraph, and continuing down to and including all of the balance of said paragraph, being the following matters, to wit:

"And that the plaintiff then and there, to wit, at the time of the first refusal and at the subsequent refusals to pay, had expended all of the cash money which he, the plaintiff, had, that he had mortgaged his homestead to enable him to carry out his part of said contract; that he had exhausted all of his resources and that he was utterly unable to obtain further money or credit from any source whatever, and that unless the defendant paid him the amount so due to him as aforesaid, he would be unable to carry out his part of said contract, all of which facts were fully understood by the defendant and the defendant was fully cognizant of the same."

Also moves to strike out all of paragraph seven as follows, to wit:

"That because of the refusal of the defendant to pay him, the plaintiff, the amount of money

so due to him, as aforesaid, the payment of which would have enabled the plaintiff readily to proceed with his contract and to carry out his part of the same, but the defendant having refused to pay the same, the plaintiff was unable to complete his part of the said contract and to go on with the same and because of the acts of the defendant, aforesaid, he, the plaintiff, was obliged to suspend all efforts to carry out his part of the said contract and to abandon the same.”

Defendant moved to strike out each and all of said matters as being incompetent, irrelevant, immaterial, redundant, sham and frivolous matters and things to be contained in an answer, and as not stating any cause or any part of a cause of action against the defendant, and not being properly pleaded herein as any cause of action or any state of facts against the defendant upon the contract sued on. [34]

This motion will be made and based upon the records and files of this action, and particularly the plaintiff's complaint and written contract attached thereto.

The defendant further moved to strike from the second cause of action all of the following matters and things, to wit:

Beginning with the word “that,” being the first word in paragraph three of the second cause of action, and continuing down to and including the word “same” immediately preceding the second semicolon in said paragraph three, being the following matters, to wit:

“That there was growing, standing and situate upon the said described lands the quantity of three million five hundred thousand (3,500,000) feet of mixed timber referred to and made the subject of the contract Exhibit ‘B’ ”

Also beginning with the word “that” immediately following the second semicolon in said paragraph three, and continuing down to and including all of the rest of said paragraph, being the following matters, to wit:

“That if the defendant had kept its several obligations entered into with the plaintiff and had not repudiated and been in default in the carrying out of its said contract, the plaintiff in the performance of his part of the said contract Exhibit ‘B’ would have readily had and made a profit of 75¢ per one thousand feet, board measure, of said mixed timber, to wit, an aggregate profit of two thousand six hundred twenty-five dollars, and by reason of the acts, repudiations, and default of the defendant, the plaintiff has been damaged in said sum.”

Defendant moves to strike out each and all of said matters as being incompetent, irrelevant, immaterial, redundant, sham and frivolous matters and things to be contained in an answer, and as not stating any cause or any part of a cause of action against the defendant, and not being properly pleaded herein as any cause of action or any state of fact against the defendant upon the contract sued on, and that said Exhibit “B” attached to and made a part of plaintiff’s complaint shows the terms and conditions of

said contract and the pleading of other terms, [35] conditions and understandings of a contract other than the written contract pleaded, are not proper to be inserted in the complaint for the purpose of stating a cause of action.

Dated this 29th day of May, A. D. 1914.

EZRA R. WHITLA,

Residence and P. O. Address, Coeur d'Alene, Idaho,

REESE H. VOORHEES,

Residence and P. O. Address, Coeur d'Alene, Idaho,

Attorneys for Defendant. [36]

State of Idaho,

County of Kootenai,—ss.

I, Ezra R. Whitla, one of the attorneys for the defendant in the above-entitled action, do hereby certify that I believe the above and foregoing motion directed to plaintiff's complaint to be well founded in point of law and that said motion is not interposed for delay.

EZRA R. WHITLA,

Attorney for Defendant.

[Endorsed]: Filed May 29, 1914, A. L. Richardson, Clerk. [37]

JOURNAL ENTRY.

Order on Motion to Strike out Part of Complaint.

At a stated term of the District Court of the United States for the District of Idaho, held at Coeur d'Alene, Idaho, on Thursday, the 4th day of June, 1914. Present: Hon. FRANK S. DIE-TRICH, Judge.

No. 594.

RUDOLPH SCHULTZ,

vs.

STACK-GIBBS LUMBER COMPANY,

On this day this cause came on to be heard upon the defendant's motion to strike out parts of the complaint, and after argument by the respective counsel the Court ordered that said motion as to the 1st cause of action be sustained, thereupon the plaintiff abandoned the 2d cause of action in said complaint, and said defendant is given one week from date to file and serve a demurrer to said complaint.

[38]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY,

Defendant,

Plaintiff's First Bill of Exceptions.

Be it remembered that this action came on to be heard at the March term of said court, at the courthouse, in the City of Coeur d'Alene, on the 4th day of June, A. D. 1914, before the Court, Hon. Frank S. Dietrich, District Judge, presiding, upon the defendant's motion to strike certain portions of the complaint herein, Chas. E. Miller, Esq., appearing for the plaintiff, and Ezra R. Whitla, Esq., appearing for defendant, which said motion to strike, omitting therefrom the caption, was in words and figures as follows, to wit:

Now comes the defendant, Stack-Gibbs Lumber Company, and moves the Court to strike from the first cause of action of plaintiff's complaint all of the following matters and things therein contained, to wit:

Commencing with the word "that," being the first word in paragraph six of said first cause of action, and continuing down to and including the words "financial condition," being at the insertion of the second semicolon in said paragraph, and being the following matter, to wit:

"That at the time of the making of the said contract with the defendant, Exhibit 'A,' the plaintiff had to his credit in the bank the sum of about seven hundred dollars, his total cash capital, of which fact he informed the defendant; that he further, then and there, informed the defendant that he owned a homestead at or near Kingston, in said County of Shoshone,

which he could and would incumber [39] for as large amount as he could by his best endeavors obtain and that these two items constituted his entire and obtainable assets, all of which he informed the defendant, and the defendant then and there well knew the same and was fully advised of the plaintiff's financial condition."

Defendant also moves to strike from said complaint that part thereof commencing with the word "that" on the fourth semicolon in said paragraph six, on page four of said complaint, and continuing down to and including the words "all his resources" in said paragraph, being the following matter, to wit:

"That he had mortgaged his said homestead for as large amount as he was able to obtain, and that the expenditures made in and about the said business by plaintiff and required to be made under the terms of said contract had exhausted all of his resources."

Also the following matter in said paragraph six, commencing with the word "and" immediately following the last semicolon in said paragraph, and continuing down to and including all of the balance of said paragraph, being the following matters, to wit:

"And that the plaintiff, then and there, to wit, at the time of the first refusal and at the subsequent refusals to pay, had expended all of the cash money which he, the plaintiff, had, that he had mortgaged his homestead to enable him to carry out his part of said contract; that he had exhausted all of his resources and that he was

utterly unable to obtain further money or credit from any source whatever, and that unless the defendant paid him the amount so due to him as aforesaid, he would be unable to carry out his part of said contract, all of which facts were fully understood by the defendant and the defendant was fully cognizant of the same.”

Also moves to strike out all of paragraph seven as follows, to wit:

“That because of the refusal of the defendant to pay him, the plaintiff, the amount of money so due to him, as aforesaid, the payment of which would have enabled the plaintiff readily to proceed with his contract and to carry out his part of the same, but the defendant having refused to pay the same, the plaintiff was unable to complete his part of the said contract and to go on with the same and because of the acts of the defendant, aforesaid, he, the plaintiff, was obliged to suspend all efforts to carry out his part of the said contract and to abandon the same.”

Defendant moved to strike out each and all of said matters as being incompetent, irrelevant, immaterial, redundant, sham and frivolous matters and things to be contained in an [40] answer, and as not stating any cause or any part of a cause of action against the defendant, and not being properly pleaded herein as any cause of action, or any state of facts against the defendant upon the contract sued on.

This motion will be made and based upon the rec-

ords and files of this action, and particularly the plaintiff's complaint and written contract attached thereto.

The defendant further moves to strike from the second cause of action all of the following matters and things, to wit:

Beginning with the word "that," being the first word in paragraph three of the second cause of action, and continuing down to and including the word "same" immediately preceding the second semicolon in said paragraph three, being the following matters, to wit:

"That there was growing, standing and situate upon the said described lands the quantity of three million five hundred thousand (3,500,000) feet of mixed timber referred to and made the subject of the contract Exhibit 'B.' "

Also beginning with the word "that" immediately following the second semicolon in said paragraph three, and continuing down to and including all of the rest of said paragraph, being the following matters, to wit:

"That if the defendant had kept its several obligations entered into with the plaintiff and had not repudiated and been in default in the carrying out of its said contract, the plaintiff in the performance of his part of the said contract Exhibit 'B' would have readily made and had a profit of 75¢ per one thousand feet, board measure, of said mixed timber, to wit, an aggregate profit of two thousand six hundred twenty-five dollars, and by reason of the acts, repudia-

tions and default of the defendant, the plaintiff has been damaged in said sum.”

Defendant moves to strike out each and all of said matters as being incompetent, irrelevant, immaterial, redundant, sham, and frivolous matters and things to be contained in an answer [41] and as not stating any cause or any part of a cause of action against the defendant, and not being properly pleaded herein as any cause of action or any state of fact against the defendant upon the contract sued on, and that said Exhibit “B” attached to and made a part of plaintiff’s complaint shows the terms and conditions of said contract, and the pleading of other terms, conditions and understandings of a contract other than the written contract pleaded, are not proper to be inserted in the complaint for the purpose of stating a cause of action.

Dated this 29th day of May, A. D. 1914.

EZRA R. WHITLA,

Residence and P. O. Address, Coeur d’Alene, Idaho,

VOORHEES & CANFIELD,

Residence and P. O. Address, Coeur d’Alene, Idaho,

Attorneys for Defendant.

State of Idaho,

County of Kootenai,—ss.

I, Ezra R. Whitla, one of the attorneys for the defendant in the above-entitled action, do hereby certify that I believe the above and foregoing motion directed to plaintiff’s complaint to be well founded in point of law and that said motion is not interposed for delay.

EZRA R. WHITLA,

Attorney for Defendant. [42]

The plaintiff by counsel opposed such motion on the ground that the portions of said complaint sought to be stricken by said motion were competent, relevant and material to the issues involved in said action.

Which said motion after argument for and against the same, and being submitted to and maturely considered by the Court, the Court granted the same as to the first cause of action stated in said complaint, to which ruling the plaintiff duly excepted before the Court, then and there, overruling and denying the said motion as to plaintiff's second cause of action.

And because the foregoing motion, ruling and exception, do not appear of record, I, the undersigned, the United States District Judge, who tried said action, have, on the stipulation of the parties, settled and signed this Bill of Exceptions, to the end that the same be made a part of the records herein, this 19th day of June, A. D. 1914.

FRANK S. DIETRICH,
United States District Judge.

It is hereby stipulated by and between the parties to the within entitled action, acting herein by and through their respective attorneys, that the plaintiff's Bill of Exceptions, number one, may be settled and signed by the Judge of said court, as a true Bill of Exceptions.

Dated June 15, A. D. 1914.

J. H. WIXOM,
CHAS. E. MILLER,
Attorneys for Plaintiff.
REESE H. VOORHEES,
EZRA R. WHITLA,
Attorneys for Defendant.

[Endorsed]: Filed June 19, 1914, A. L. Richardson, Clerk. [43]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY, a Corporation,

Defendant.

Demurrer.

Now comes defendant and demurs to plaintiff's first cause of action, and for cause of demurrer states:

I.

That said complaint does not state facts sufficient to constitute a cause of action against this defendant for the reason:

(1) That it appears from Exhibit "A" attached to and made a part of said first cause of action, that the logs for which plaintiff was to receive compensation were to be scaled by a scaler to be mutually agreed upon, and said complaint does not allege that

any scaler was mutually agreed upon or any logs scaled by a scaler to be mutually agreed upon, and the scaler to be mutually agreed upon was a condition precedent to the right of the plaintiff to compensation therefor.

(2) That it appears from said contract, Exhibit "A" attached to and made a part of said first cause of action, that said plaintiff was to furnish receipts for all labor performed on the above logs or satisfactory evidence that all labor had been fully paid, and also receipts for payment of all supplies used in the logging of said timber, or satisfactory evidence that the same had been fully paid for [44] and it appears from said contract that the furnishing of such receipts or satisfactory evidence was a condition precedent to the right of compensation by said plaintiff, and said complaint does not allege, state or show that such labor or supplies were paid for by the plaintiff prior to said time, or that such receipts or evidence were furnished to the defendant.

(3) That Exhibit "A" attached to and made a part of said complaint, shows that payment of \$3.25 to be made on the 15th of each and every month for the logs placed on skids the preceding month, was conditional upon the plaintiff having the roads from the skidways to the banking ground of said logs on Pine Creek, completed, and said complaint does not allege, state or show that plaintiff had acquired a deed for said roads from the skidding ground of said logs to Pine Creek, or that he had or owned or had secured the right of way for said roads, or had built the same.

II.

That said complaint is ambiguous, unintelligible and uncertain in this:

(a) That it alleges in paragraph six that said contract provided and required plaintiff to furnish all right of way over which to haul logs to be cut from the land at his own expense, and also alleges that plaintiff had expended for right of way the sum of \$200.00 and more than \$1100.00 for building and constructing such road and to fit the same for the purpose of hauling the logs to water, but does not allege, state or show that plaintiff had secured or had any legal contract for the right of way or use of the road or an easement for hauling logs across the land from the place of the skidding of said logs to the place where they were to be delivered in Pine Creek, or that such road had been built its entire distance sufficient or proper over which to haul said logs. [45]

(b) That said complaint alleges that said plaintiff has laid out and expended the sum of \$200.00 for right of way and \$1100 in making road and \$250 expended for labor, and seeks damages for all of said amounts and also for all profits which the plaintiff would have secured had he completed said contract, whereas, had he completed said contract the sums of money expended by him for roads, labor and in making said roads would have been consumed, and he would have received no return therefor.

(c) That in said first cause of action two causes of action are improperly commingled and united in one, to wit: A cause of action for damages for alleged

profits claimed to be recoverable because of breach of contract, and also an alleged cause of action for moneys expended as such damages in buying and building roads, which cannot be recovered in the same cause of action with the alleged profit, for the reason that it creates in the same cause of action a different element of liability for damages to which the plaintiff is not entitled.

Now comes the *plaintiff* and demurs to the second cause of action set forth in plaintiff's complaint, and for cause of demurrer states:

I.

That said complaint does not state facts sufficient to constitute a cause of action against this defendant in this:

(a) That the contract upon which said cause of action is based is attached to and made a part of said complaint as Exhibit "B" and shows upon its face that it was a contract for the sale of certain timber between the plaintiff and defendant whereby in consideration of plaintiff entering into another [46] contract the defendant gave him an absolute unconditional contract for the purchase of said other timber, which said contract was dated October 15, 1912, and in which the plaintiff was to have four years in which to remove said timber, and said contract is still in full force and effect and no breach thereof is alleged in plaintiff's second cause of action.

(b) That it is alleged in paragraph three of the second cause of action that the contract, Exhibit "B," was dependent upon and its carrying out was to follow the completion of the contract set out in

the first cause of action as Exhibit "A," whereas said Exhibit "B" is a separate and independent contract, the terms of which are fully contained within itself and which does not contain any statement or stipulation as set forth in paragraph three of the second cause of action, and the written contract set forth by plaintiff as the foundation of his cause of action cannot be added to or varied by the allegations of plaintiff's complaint, as said written contract is made a part thereof and shows that it was not dependent upon the contract set forth in the first cause of action and was not to follow the same, but was a complete contract, all of the terms of which are contained within itself, giving and granting to the plaintiff the timber standing upon said land in consideration of certain payments to be made by him and other conditions to be performed by him which were separate and distinct from any and all conditions in and made a part of Exhibit "A."

II.

That said complaint is ambiguous, unintelligible and uncertain in this:

(a) That it alleges in paragraph six that said contract provided and required plaintiff to furnish all right of way over which to haul the logs to be cut from the land at his own expense and also alleges that plaintiff had expended for right of way [47] the sum of \$200.00 and more than \$1100.00 for building and constructing such road and to fit the same for the purpose of hauling the logs to water, but does not allege, state or show that plaintiff had secured or had any legal contract for the right of way or use

of the road or an easement for hauling logs across the land from the place of the skidding of said logs to the place where they were to be delivered in Pine Creek, or that such road had been built its entire distance sufficient or proper over which to haul said logs.

(b) That said complaint alleges that said plaintiff has laid out and expended the sum of \$200.00 for right of way and \$1100.00 in making road and \$250.00 expended for labor, and seeks damages for all of said amounts and also for all profit which the plaintiff would have secured had he completed said contract, whereas, had he completed said contract the sums of money expended by him for roads, labor and in making said roads would have been consumed, and he would have received no return therefor.

(c) That in said first cause of action two causes of action are improperly commingled and united in one, to wit: A cause of action for damages for alleged profits claimed to be recoverable because of breach of contract, and also an alleged cause of action for moneys expended as such damages in buying and building roads, which cannot be recovered in the same cause of action with the alleged profit, for the reason that it creates in the same cause of action different element of liability for damages to which the plaintiff is not entitled.

WHEREFORE, defendant prays judgment that this demurrer be sustained and plaintiff's complaint dismissed at plaintiff's costs and defendant have and

recover its costs and disbursements herein expended.

REESE H. VOORHEES,

Residence and P. O. Address, Spokane, Wash. [48]

EZRA R. WHITLA,

Residence and P. O. Address, Coeur d'Alene, Idaho,

Attorneys for Defendant.

State of Idaho,

County of Kootenai,—ss.

I, Ezra R. Whitla, being one of the attorneys for the defendant in the above-entitled action, do hereby certify that I believe the above and foregoing demurrers to plaintiff's first and second cause of action, and both thereof, to be well founded in point of law, and said demurrers or either thereof, are not interposed for delay but are interposed by defendant in good faith believing that the same are well founded in point of law.

EZRA R. WHITLA,

Attorney for Defendant. [49]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER CO., a Corporation,

Defendant.

Affidavit of Service of Demurrer by Mail.

State of Idaho,

County of Kootenai,—ss.

C. H. Nash, being first duly sworn, deposes and

says: I am a citizen of the State of Idaho, over the age of 21 years and am not a party to the above-entitled action.

That I served the defendant's demurrer to plaintiff's complaint in the above-entitled action, on the attorneys of record for the above-named plaintiff, on the 8th day of June, A. D. 1914, between the hours of 8:00 A. M. and 5 P. M. of said day, to wit, at the hour of 9:45 A. M., by depositing a true and correct copy of said demurrer in the postoffice in the city of Coeur d'Alene, Idaho, directed to C. E. Miller, one of the attorneys of record for plaintiff, at his place of residence and business in Wallace, Shoshone County, Idaho, and paid the postage thereon in advance; that there is a regular communication of United States mails from said postoffice of deposit aforesaid, to said Wallace, Shoshone County, Idaho, the place of business of said C. E. Miller.

C. H. NASH.

Subscribed and sworn to before me this 8th day of June, A. D. 1914.

[N. P. Seal]

EZRA R. WHITLA,
Notary Public.

[Endorsed]: Filed June 8th, 1914. A. L. Richardson, Clerk. By Lawrence M. Larson, Deputy Clerk. [50]

JOURNAL ENTRY.

Order Sustaining Demurrer.

At a stated term of the District Court of the United States for the District of Idaho, held at Coeur d'Alene, Idaho, on Thursday, the 19th day of November, 1914. Present: Hon. FRANK S. DIETRICH, Judge.

No. 594.

RUDOLPH SCHULTZ.

vs.

STACK-GIBBS LUMBER COMPANY.

On this day was announced the decision of the Court upon the demurrer to the complaint herein, heretofore submitted which decision is in writing and on file and in accordance therewith ordered that said demurrer be sustained in part as to the 1st cause of action and said demurrer be sustained as to the 2d cause of action. [51]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY,

Defendant.

Election of Plaintiff to Stand on His Complaint.

The plaintiff, above named, by Chas. E. Miller, his attorney, a demurrer to his complaint herein

having been heretofore sustained, now here elects to stand upon the sufficiency of his said complaint, and the court may proceed accordingly.

CHAS. E. MILLER,

Attorney for Plaintiff,

Residence and Postoffice Address, Wallace, Idaho.

[Endorsed]: Filed Nov. 25, 1914. A. L. Richardson, Clerk. [52]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY, a Corpora-
tion,

Defendant.

Judgment of Dismissal.

In this action the defendant's demurrer to plaintiff's complaint having heretofore been sustained, and the plaintiff having filed his election to stand upon said complaint to which said demurrer was sustained:

Now at this day on motion of Ezra R. Whitla, one of the attorneys for defendant, it is by the Court ordered, adjudged and decreed that the defendant have and recover of and from the plaintiff its costs and disbursements herein expended, taxed at the sum of \$——.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed Nov. 25, 1914. A. L. Richardson, Clerk. [53]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

AT LAW.

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY,

Defendant.

Petition for Writ of Error.

And now comes Rudolph Schultz, plaintiff herein, and says that on or about the 25th of November, A. D. 1914, this court entered judgment herein in favor of the defendant and against this plaintiff in which judgment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a Writ of Error may be issued in this behalf to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of, and that a transcript of the record proceedings and papers in this cause, duly authenticated may be sent to the said Circuit Court of Appeals.

J. H. WIXOM,

CHAS. E. MILLER,

Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 16, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy. [54]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

AT LAW.

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY,

Defendant.

Assignment of Errors.

Rudolph Schultz, plaintiff in this action, in connection with and as part of his petition for a writ of error filed herein, makes the following assignment of errors which he avers were committed by the Court in the rendition of the judgment against this plaintiff appearing upon the record, herein, that is to say:

First. For that the Court erred in its order and judgment of June 4th, A. D. 1914, in striking from the first cause of action, set forth in the plaintiff's complaint, the following paragraphs therein contained, to wit:

(a) Commencing with the word "that," being the first word in paragraph six of said first cause of action and continuing down to and including the words "financial condition," being at the insertion of the second semicolon in said paragraph, and being following matter, to wit:

“That at the time of the making of the said contract with the defendant, Exhibit ‘A,’ the plaintiff had to his credit in the bank the sum of about seven hundred dollars, his total cash capital, of which fact he informed the defendant; that he further, then and there, informed the defendant that he owned a homestead at or near Kingston, in said County of Shoshone, which he could and would incumber for as large amount as he could by his best endeavors obtain and that these two items constituted his entire and obtainable assets, all of which he informed the defendant, and the defendant then and there well knew the same and was fully advised of the plaintiff’s financial condition.” [55]

(b) Also that part hereof commencing with the word “that” on the fourth semicolon in said paragraph six, on page four of said complaint, and continuing down to and including the words “all his resources” in said paragraph, being the following matter, to wit:

“That he had mortgaged his said homestead for as large amount, as he was able to obtain and that the expenditures made in and about the said business by plaintiff and required to be made under the terms of said contract had exhausted all of his resources.”

(c) Also the following matter in said paragraph six, commencing with the word “and” immediately following the last semicolon in said paragraph, and continuing down to and including all of the balance

of said paragraph, being the following matters, to wit:

“And that the plaintiff, then and there, to wit, at the time of the first refusal and at the subsequent refusals to pay, had expended all of the cash money which he, the plaintiff, had, that he had mortgaged his homestead to enable him to carry out his part of said contract; that he had exhausted all of his resources and that he was utterly unable to obtain further money or credit from any source whatever, and that unless the defendant paid him the amount so due to him as aforesaid, he would be unable to carry out his part of said contract, all of which facts were fully understood by the defendant and the defendant was fully cognizant of the same.”

(d) Also, all of paragraph seven as follows, to wit:

“That because of the refusal of the defendant to pay him, the plaintiff, the amount of money so due him, as aforesaid, the payment of which would have enabled the plaintiff readily to proceed with his contract and to carry out his part of the same, but the defendant having refused to pay the same, the plaintiff was unable to complete his part of the said contract and to go on with the same and because of the acts of the defendant, aforesaid, he, the plaintiff, was obliged to suspend all efforts to carry out his part of the said contract and to abandon the same.” [56]

Second. The Court erred in holding and deciding

that the portions of the complaint set out in said first assignment of error was incompetent, irrelevant, immaterial, redundant, sham and frivolous and therefore subject to be stricken.

Third. The Court erred in sustaining the motion of the defendant to strike from said complaint the paragraphs set out in said first assignment of error.

Fourth. The Court erred in sustaining the demurrer of the defendant herein, to plaintiff's first cause of action, in holding and deciding that the provision in the contract, exhibit "A," upon which said first cause of action was based which provided that the plaintiff should build roads from the skidways to the banking ground on Pine Creek, so that the logs could be hauled to Pine Creek without additional expense, was a condition precedent to the maturity of the obligation to make the first payment, provided for in said contract, exhibit "A."

Fifth. The Court erred in sustaining the demurrer of the defendant to the first cause of action of the complaint of the plaintiff.

Sixth. The Court erred in holding and deciding that the second cause of action set forth in the complaint of the plaintiff herein did not state facts sufficient to constitute a cause of action against the defendant.

Seventh. The Court erred in rendering judgment against this plaintiff upon the sustaining of the demurrer of the defendant.

Eighth. The Court rendered judgment against this plaintiff whereas judgment ought to have been

rendered in favor of the plaintiff, and against the defendant.

Wherefore the plaintiff prays that the said judgment may be reversed.

J. H. WIXOM,
CHAS. E. MILLER,
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 16, 1915. A. L. Richardson, Clerk. By P. E. Zanger, Deputy. [57]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

AT LAW.

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY,

Defendant.

**Order Allowing Writ of Error [and Fixing Amount
of Bond].**

This 15th day of February, A. D. 1915, came the plaintiff by J. H. Wixom and Chas. E. Miller, his attorneys, and filed herein and presented to the Court his petition, praying for the allowance of a Writ of Error, an assignment intended to be urged by him, praying, also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and

further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the Writ of Error upon the plaintiff giving bond according to law, in the sum of Two Hundred Dollars which shall operate a supersedeas bond.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed Feb. 16, 1915. A. L. Richardson, Clerk. By P. E. Zanger, Deputy. [58]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY, a Corporation,

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That we, Rudolph Schultz as principal and the National Surety Company, as sureties, are held and firmly bound unto the defendant in error, Stack-Gibbs Lumber Company, in the full sum of Two Hundred (\$200.00) Dollars to be paid to the said defendant, Stack-Gibbs Lumber Company, its certain attorneys, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators and successors, jointly and severally by these presents. Sealed

with our seals, and dated this 10th day of March, A. D. 1915.

Whereas, lately at a District Court of the United States for the District of Idaho, Northern Division, in a suit depending in said court, between Rudolph Schultz, plaintiff, and Stack-Gibbs Lumber Company, defendant, a judgment was rendered against the said Rudolph Schultz and the said Rudolph Schultz having obtained a Writ of Error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Stack-Gibbs Lumber Company, citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco in said circuit, on the third day of May, next. [59]

Now the condition of the above obligation is such, that if the said Rudolph Schultz shall prosecute said writ of error to effect and answer all damages and costs if he fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

RUDOLPH SCHULTZ. (Seal)

NATIONAL SURETY COMPANY,

A. L. NICHOLSON,

Agent.

J. H. WIXOM,

Attorney in Fact.

Sealed and delivered in the presence of
ESTELLA PERKINS,
MARIE PERKINS.

Approved by .

FRANK S. DIETRICH,
District Judge. [60]

State of Idaho,
County of Shoshone,—ss.

A. L. Nicholson and J. H. Wixom being first duly sworn, each for himself and not one for the other, on oath deposes and says: That he, jointly with the other, is the attorney in fact of the National Surety Company, the surety named in the foregoing undertaking; that as such attorney in fact he is, jointly with the other, authorized to execute surety bonds and undertakings for and on behalf of the said surety company in the State of Idaho. That the said surety company has complied with all of the laws of the State of Idaho relating to such corporations and is authorized to execute bonds and undertakings, and to do business in the State of Idaho as is evidenced by the certificate now on file in the office of the County Recorder of Shoshone County, State of Idaho, and also in the office of the Secretary of State of the State of Idaho, at Boise, Idaho.

NATIONAL SURETY COMPANY.

A. L. NICHOLSON,
Agent.

J. H. WIXOM,
Attorney in Fact.

Subscribed and sworn to before me this 11th day of March, 1915.

[Seal]

R. E. WENIGEN,
Probate Judge.

[Endorsed]: Filed March 20th, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy. [61]

Order Extending Time to File Transcript.

*In the District Court of the United States for the
District of Idaho, Northern Division.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY, a Corporation,

Defendant.

It appearing by suggestion that because of distance for communication and the time required to prepare and print the transcript in the above-entitled action that the period for the same allowed and required by the Writ of Error, herein, is too short, on motion of Chas. E. Miller, one of the attorneys for plaintiff in error:

IT IS ORDERED that the time in which the plaintiff in error may file the transcript, herein, be extended for a period of 30 days beyond the return day mentioned in the Writ of Error, herein.

Dated at Boise, Idaho, April 12, A. D. 1915.

FRANK S. DIETRICH,
Judge of Said Court.

[Endorsed]: Filed April 12th, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy. [62]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY, a Corporation,

Defendant.

Praeceptum for Transcript.

To the Clerk of Said Court:

You are requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to a writ of error allowed in the above-entitled cause and to include in such transcript of record the following, and no other papers or exhibits, to wit:

1. Order of Removal by State Court.
2. Plaintiff's Complaint, Summons and Proof of Service.
3. Defendant's Motion to Strike Out Parts of Complaint.
4. Order Made on Said Motion.
5. Plaintiff's First Bill of Exceptions.
6. Defendant's Demurrer to Complaint.
7. Order Sustaining Such Demurrer.
8. Plaintiff's Election to Stand on Same.
9. Judgment Dismissing Action.
10. Petition for Writ of Error.

11. Assignment of Errors.
12. Order Allowing Writ of Error.
13. Order Fixing Bond on Writ of Error.
14. Bond on Writ of Error.
15. Writ of Error.
16. Citation in Error and Proof of Lodging With Clerk.
17. Admission of Service of Citation. [63]
18. This Praecipe.

CHAS. E. MILLER,
J. H. WIXOM,
Attorneys for Plaintiff.

[Endorsed]: Filed March 20, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy. [64]

[Writ of Error (Original).]

The United States Circuit Court of Appeals for the Ninth Circuit.

The United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States to the Honorable
Judge of the District Court of the United States,
for the District of Idaho, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court, before you, between Rudolph Schultz, plaintiff, and Stack-Gibbs Lumber Company, defendant, a manifest error hath happened, to the great damage of the said Rudolph Schultz, plaintiff, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected,

and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with the things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, on the 19th day of April next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 20th day of March, A. D. 1915, in the 139th year of the independence of the United States of America.

[Seal] Attest: A. L. RICHARDSON,
Clerk of the District Court of the United States, District of Idaho.

By Pearl E. Zanger,
Deputy.

Allowed by

FRANK S. DIETRICH,
U. S. District Judge. [65]

[66]

[Endorsed]: No. 594. The United States Circuit Court of Appeals for the Ninth Circuit. Rudolph Schultz, Plaintiff, vs. Stack-Gibbs Lumber Company, Defendant. Writ of Error. Filed on Return April

7, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

[Citation on Writ of Error (Original).]

The United States Circuit Court of Appeals for the Ninth Circuit.

The United States of America,
Ninth Judicial Circuit,—ss.

To Stack-Gibbs Lumber Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in said circuit, on the 19th day of April next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Idaho, wherein Rudolph Schultz, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable FRANK S. DIETRICH, District Judge of the United States for the District of Idaho, at Boise, within said circuit, this 20th day of March, in the year of our Lord one thousand nine hundred and fifteen, and of the independence of the

United States of America, the one hundred and thirty-nine.

FRANK S. DIETRICH,

United States District Judge.

[Seal]

Attest: A. L. RICHARDSON,

Clerk.

We hereby this 31 day of March, A. D. 1915, accept due personal service of this citation on behalf of Stack-Gibbs Lumber Company, the defendant in error.

EZRA R. WHITLA.

Attorneys for Defendant in Error, [67]

[Endorsed]: No. 594. The United States Circuit Court of Appeals for the Ninth Circuit. Rudolph Schultz, Plaintiff, vs. Stack-Gibbs Lumber Company, Defendant. Citation. Filed on Return April 7, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

[68]

[Return to Writ of Error.]

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

[Seal]

Attest: A. L. RICHARDSON,

Clerk.

By Pearl E. Zanger,

Deputy Clerk. [69]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court of the United States for the
District of Idaho, Northern Division.*

RUDOLPH SCHULTZ,

Plaintiff,

vs.

STACK-GIBBS LUMBER COMPANY,

Defendant.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the above and foregoing transcript of pages numbered from 1 to 70, inclusive, contain true and correct copies of the Complaint, Summons, Proof of Service of Summons, Petition for removal, Bond on Removal, Notice of Filing Petition Bond for Removal, Order of Removal, Clerk's Certificate to Transcript Removed to State Court, Motion to Strike Out Part of Complaint, Order on Motion to Strike Out Part of Complaint, Plaintiff's First Bill of Exceptions, Demurrer, Order Sustaining Demurrer, Election of Plaintiff to Stand on His Complaint, Judgment of Dismissal, Petition for Writ of Error, Assignment of Error, Order Allowing Writ of Error, Bond on Writ of Error, Praecipe for Transcript, Order Extending Time to File Transcript, Original Writ of Error, Original Citation, Return to Record and Clerk's Certificate, which together constitute the transcript of the record herein

upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$40 and that the same has been paid by the Appellant.

WITNESS my hand and the seal of said court, affixed at Boise, Idaho, this 21st day of April, 1915.

[Seal]

A. L. RICHARDSON,

Clerk.

By Pearl E. Zanger,

Deputy Clerk. [70]

[Endorsed]: No. 2604. United States Circuit Court of Appeals for the Ninth Circuit. Rudolph Schultz, Plaintiff in Error, vs. Stack-Gibbs Lumber Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Idaho, Northern Division.

Filed May 1, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

